

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

JANET SANDBERG,

Plaintiff

v.

Civil Action No. 93-0275-T

THE HOUSING AUTHORITY
OF THE CITY OF EAST PROVIDENCE,
RHODE ISLAND, and DOROTHY PATTI,
individually and in her official
capacity as Executive Director of
Housing Authority of the City of
East Providence, Rhode Island,

Defendants

MEMORANDUM AND ORDER DENYING PLAINTIFF'S
MOTION FOR CLASS CERTIFICATION

Ernest C. Torres, United States District Judge.

Plaintiff Janet Sandberg seeks declaratory and injunctive relief against Defendants, the East Providence Housing Authority (the "EPHA") and Dorothy Patti ("Patti"), its Executive Director, for alleged violation of Sandberg's rights under numerous federal and state housing and discrimination laws.¹ Sandberg also asserts a violation of her rights to due process and equal protection under the Fourteenth Amendment to the United States Constitution. Specifically, Sandberg alleges that the EPHA and Patti categorically exclude single, handicapped persons under age sixty-

¹ Specifically, Sandberg alleges violation of the following laws: the United States Housing Act, 42 U.S.C. § 1437d(c)(3) and its implementing regulations; the Rhode Island Housing Authorities Law, R.I. Gen. Laws §§ 45-25-18.1 and 45-25-18.7; the Fair Housing Act of 1968, 42 U.S.C. § 3604(f) and its implementing regulations; the Rhode Island Fair Housing Practices Act, R.I. Gen. Laws §§ 34-37-2 and 34-37-4(A); the Rehabilitation Act of 1973, 29 U.S.C. § 794(a) and its implementing regulations; the Americans with Disabilities Act, 42 U.S.C. § 12132.

two, who do not receive certain federal benefits, from admission to public housing and that they prevent or discourage such persons from applying for public housing.

Currently before the Court is Sandberg's Motion for Class Certification, brought under Federal Rule of Civil Procedure 23(b)(2). She seeks to represent a class of

low-income single persons who: (i) are or may be disabled or handicapped within the meaning of 42 U.S.C. section 1437a(b)(3) and 24 C.F.R. section 912.2; (ii) have sought admission, are presently seeking admission, or may in the future seek admission, to public housing owned, operated, and managed by the EPHA; and (iii) are not sixty-two (62) years of age or older and are not recipients of Supplemental Security Income ("SSI") or Social Security Disability Insurance ("SSDI").

Complaint, ¶ 3. Sandberg alleges that all members of the class are subject to the same injury that she faces: "denial of affordable public housing in violation of applicable federal and state law." Complaint, ¶ 5.

Sandberg's verified complaint alleges that she is single, disabled, and fifty-three years old and that she receives General Public Assistance from the State of Rhode Island. It also alleges that once in April, 1993, and again in May, she was told by unidentified EPHA employees that she was ineligible for public housing because she was a General Public Assistance recipient under the age of 62 and was not receiving SSI or SSDI benefits. Sandberg claims that her experience indicates a general policy on the part of EPHA to categorically exclude others similarly situated from admission to public housing.

The EPHA and Patti have submitted the "East Providence Housing Authority Occupancy and Admissions Policy, Tenant Selection Plan," (the "Plan") and an affidavit of Mary Ann Almeida, EPHA's Tenant Selector/Secretary. The Plan expresses no such policy.² Furthermore, in her affidavit, Almeida avers that prior to the filing of the complaint, she had not spoken to Sandberg and that she has never made statements like those alleged by Sandberg to inquiring individuals.³ Almeida also states that Sandberg filed an application for housing with the EPHA on June 8, 1993, and was placed on the top of the waiting list because she was entitled to preference based on her status as _____. In fact, Almeida states that the EPHA made an apartment available to Sandberg on August 2, 1993, and that Sandberg's application was handled in the same way that all other applications are handled.

² The definitional section of the Occupancy and Admissions Policy is somewhat confusing. The term "family" is defined to include "single persons in the case of elderly, disabled or handicapped." Plan, ¶ A(1). The definition of "single non-elderly" states that single persons who do not constitute an elderly family can qualify as a family if they are

"(1) displaced; or (2) the remaining member of a tenant family; or (3) other single persons, under limited circumstances." The paragraph goes on to state that "PHA may not admit single persons who are not elderly, displaced or the remaining member of tenant families without HUD authorization. . . . A single person is someone living alone or intending to live alone who does not qualify as an elderly family, a displaced person, or the remaining member of a tenant family."

Despite the lack of clarity as to the status of single non-elderly disabled persons like Plaintiff Sandberg, there appears no bar to such persons either applying for or being granted EPHA housing units.

³The affidavit does not negate the possibility that there are others in the EPHA office who might have spoken to Sandberg as alleged.

Discussion

Federal Rule of Civil Procedure 23(a) sets forth four prerequisites which an individual seeking class certification must satisfy in order to maintain a class action. See Makuc v. American Honda Motor Co., 835 F.2d 389, 394 (1st Cir. 1987). They are that:

(1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

Fed. R. Civ. P. 23(a). If the requirements of Rule 23(a) are met, a class action of the type proposed by Sandberg may be maintained if she shows that "the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole." Fed. R. Civ. P. 23(b)(2). Whether a case should be certified as a class action is a matter committed to the district court's discretion. Makuc v. American Honda Motor Co., 835 F.2d at 394.

Here, Sandberg has failed to show that the class is so numerous that joinder of all members is impracticable. In her memorandum of law, she asserts that there are at least 5000 persons

in Rhode Island who receive General Public Assistance and that "there is an undeterminable number of individuals who are financially eligible for public housing and are handicapped or disabled, or both, and who are less than sixty-two (62) years of age and do not receive SSI or SSDI," and that these individuals fall within the class. However, her verified complaint contains no factual allegations that would permit the Court to determine how many individuals share all of those characteristics. The existence of approximately 5000 General Public Assistance recipients in Rhode Island tells the Court nothing about who, among those, might be disabled, under age sixty-two, interested in public housing in East Providence, and not receiving SSI or SSDI.

Furthermore, there is nothing in the record now before the Court indicating that there are any such persons besides Sandberg who have been rejected by the EPHA or discouraged from applying for public housing. On the contrary, the Plan and affidavit submitted by EPHA indicate that it does not exclude members of the putative class. That evidence is corroborated by both the absence if any apparent motive for the policy alleged by Sandberg and by the favorable action taken on Sandberg's own application. In short, the facts alleged by Sandberg are insufficient to support a reasonable inference that other members of the class exist or that if they do, they are so numerous that joinder is impracticable. See Makuc, 835 F.2d at 394;⁴ Westcott v.

⁴ Makuc does not appear to have dealt with a Rule 23(b)(2) class action seeking declaratory or injunctive relief for a violation of civil or constitutional rights. Other courts,

Califano, 460 F. Supp. 737 (D.Mass. 1978), aff'd, 443 U.S. 76 (1979).

Mere speculation is not a proper basis for a finding of numerosity under Rule 23(a). Makuc, 835 F.2d at 394; Westcott v. Califano, 460 F.Supp. at 739. Other courts have found the numerosity requirement to have been met based on a large number of future class members.

In addition, the Court notes that even if Sandberg were able to satisfy the numerosity requirement of Rule 23(a)(1), it does not appear that she could fairly and adequately represent the interests of the class, as required by Rule 23(a)(4). The record indicates that she has been offered an EPHA apartment and, therefore, may no longer be a member of the class she purports to represent. Moreover, there is no indication that she still has either the inclination to pursue her claim or a sufficient stake in the outcome that are required to ensure that she will vigorously represent the interest of any class members.

however, have denied class certification in civil rights or constitutional actions, based at least in part on the fact that the plaintiff failed to show the existence of any other class members. See, e.g., Jamerson v. Board of Trustees, 662 F.2d 320, 325 (5th Cir. 1981); Mazus v. Dep't of Transp., 629 F.2d 870, 876 (3rd Cir. 1980); Perez v. Personnel Bd. of Chicago, 690 F. Supp. 670, 672 (N.D. Ill. 1988).

CONCLUSION

Accordingly, it is ORDERED that Plaintiff Sandberg's Motion for Class Certification is hereby DENIED.

IT IS SO ORDERED.

Ernest C. Torres
United States District Judge

September ___, 1993